

**EIGHTY-FOURTH GENERAL ASSEMBLY  
2011 REGULAR SESSION  
DAILY  
HOUSE CLIP SHEET**

APRIL 27, 2011

**HOUSE FILE 561**

**H-1692**

1 Amend House File 561 as follows:  
2 1. By striking everything after the enacting clause  
3 and inserting:  
4 <Section 1. RISK ASSESSMENT INQUIRY. The utilities  
5 board of the utilities division of the department  
6 of commerce shall conduct an inquiry to identify  
7 and analyze the risks associated with financing  
8 nuclear power plants and the assignment of those  
9 risks, and safety risks associated with traditional  
10 nuclear facility and small modular reactor technology  
11 construction. The board shall submit a report  
12 containing a summary of the inquiry and resulting  
13 recommendations to the general assembly by January  
14 9, 2012. Any costs associated with the inquiry  
15 shall be assigned by the board to a rate-regulated  
16 electric utility that was subject to a revenue-sharing  
17 settlement agreement with regard to its electric base  
18 rates as of January 1, 2010.>  
19 2. By renumbering as necessary.

**By** PETERSEN of Polk

**H-1692** FILED APRIL 26, 2011

**HOUSE FILE 561**

**H-1693**

1 Amend the amendment, H-1689, to House File 561 as  
2 follows:  
3 1. Page 1, by striking lines 10 through 13 and  
4 inserting <an annual basis, not more than one percent  
5 of the applicable rate for each customer class for  
6 the previous calendar year. The limitation in this  
7 subparagraph division shall be applicable for the  
8 longer of a period of ten years from the date the  
9 ratemaking principles order is issued or the period of  
10 construction of the facility.>>

**By** KAJTAZOVIC of Black Hawk

**H-1693** FILED APRIL 26, 2011

**HOUSE FILE 561**

**H-1694**

1 Amend the amendment, H-1623, to House File 561 as  
2 follows:  
3 1. Page 1, line 31, by striking <may> and inserting  
4 <shall>

**By** ISENHART of Dubuque

**H-1694** FILED APRIL 26, 2011

HOUSE FILE 561

H-1696

1 Amend the amendment, H-1459, to House File 561 as  
2 follows:

3 1. Page 1, by striking lines 5 through 19 and  
4 inserting:

5 <NEW SUBSECTION. 4. In the case of an application  
6 to construct a nuclear generation facility, the  
7 applicant commits to prepare plans addressing  
8 United States nuclear regulatory commission and  
9 federal emergency management agency public emergency  
10 preparedness and response strategy requirements in  
11 the event of an accident, natural disaster, or other  
12 circumstance, condition, or occurrence compromising  
13 the safety and security of the facility and posing a  
14 potential threat to public health, safety, or welfare.  
15 The plans shall also address coordination with state  
16 emergency planning departments, public safety drills,  
17 and emergency response testing in response to a  
18 simulated nuclear disaster as required by the rules of  
19 the United States nuclear regulatory commission and the  
20 federal emergency management agency.>>

By SODERBERG of Plymouth

H-1696 FILED APRIL 26, 2011

HOUSE FILE 561

H-1697

1 Amend House File 561 as follows:

2 1. Page 8, after line 33 by inserting:

3 <3A. A utility that files an application pursuant  
4 to section 476A.3 to build a nuclear generating  
5 facility including but not limited to small modular  
6 reactor technology, or seeks authority pursuant to a  
7 combined construction and operating license or an early  
8 site permit from the United States nuclear regulatory  
9 commission, or a utility which partners with a utility  
10 filing an application or seeking authority, or a  
11 utility which enters into a purchase agreement to buy  
12 power generated by a nuclear facility, shall be subject  
13 to a minimum capacity and energy savings performance  
14 standard of a one and one-half percent annual reduction  
15 in projected energy use based upon anticipated demand  
16 and population shifts within the utility's service  
17 area. The board shall determine a date by which the  
18 utility shall annually submit energy savings results  
19 achieved during the preceding twelve months documenting  
20 the extent to which the one and one-half percent  
21 reduction standard has been met. Application of the  
22 reduction standard shall be subject to the following  
23 requirements:

24 a. A utility subject to this subsection which  
25 documents a kilowatt-hour or cubic foot energy usage  
26 reduction which exceeds the level corresponding to  
27 the reduction standard by more than one-tenth of one  
28 percent shall be entitled to recover an additional  
29 one percent of the costs of its energy efficiency  
30 plan through the automatic adjustment mechanism under  
31 section 476.6, subsection 8, for each one-tenth of one  
32 percent by which the reduction standard is exceeded.

33 b. A utility subject to this subsection which  
34 documents a reduction that fails to meet the reduction  
35 standard by more than one-tenth of one percent shall  
36 be subject to an assessment imposed by the board.  
37 The electric utility shall be assessed two cents for  
38 each kilowatt-hour of energy savings achieved below  
39 the level corresponding to the reduction standard,  
40 and shall be subject to an assessment of twenty  
41 cents for each hundred cubic feet of energy savings  
42 achieved below the level corresponding to the reduction  
43 standard. Amounts assessed shall be remitted to  
44 the board for allocation to an independent energy  
45 efficiency administrator selected by the board on a  
46 competitive basis to improve energy efficiency in a  
47 manner established by the board by rule in the service  
48 area of the utility.

49 c. The board shall designate by rule qualifying  
50 energy savings or reduction activities in forms

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1 other than that primarily sold by a utility which  
2 may be counted toward compliance with the reduction  
3 standard, including but not limited to the promotion  
4 of customer-owned renewable energy or plug-in hybrid  
5 electric motor vehicles, and may permit allocation  
6 of energy efficiency expenditures that do not have a  
7 demonstrated cost-effectiveness if the board determines  
8 the expenditures contribute to achievement of the  
9 standard. The board may allocate additional weighting  
10 to energy efficiency programs for qualified low-income  
11 persons in achieving the reduction standard.

12 d. A utility otherwise subject to the reduction  
13 standard may elect to opt out of compliance with the  
14 standard by agreeing to an assessment determined by  
15 the board in an amount corresponding to or sufficient  
16 to attain the standard, which shall be remitted to  
17 the board for allocation to an independent energy  
18 efficiency administrator selected by the board as  
19 provided in paragraph "b".>

By ISENHART of Dubuque

HOUSE FILE 564

H-1698

1 Amend House File 564 as follows:

2 1. By striking everything after the enacting clause  
3 and inserting:

4 <DIVISION I

5 UNIFORM COMMON INTEREST OWNERSHIP ACT

6 Section 1. NEW SECTION. 499C.101 Title.

7 This chapter shall be known and cited as the  
8 "Uniform Common Interest Ownership Act".

9 Sec. 2. NEW SECTION. 499C.102 Public policy.

10 The general assembly declares that it is the public  
11 policy of the state that the management and affairs of  
12 common interest communities be conducted openly, and  
13 this chapter shall be construed, to provide open access  
14 to the management of the common interest community to  
15 the unit owners.

16 Sec. 3. NEW SECTION. 499C.103 Definitions.

17 As used in this chapter, unless the context  
18 otherwise requires:

19 1. "Assessment" means a sum attributable to each  
20 unit and due to the unit owners association as may be  
21 provided in a declaration or in the bylaws.

22 2. "Bylaws" means the instruments, however  
23 denominated, that contain the procedures for conducting  
24 the affairs of the unit owners association or the  
25 executive board regardless of the form in which the  
26 association is organized, including any amendments to  
27 such instruments.

28 3. "Common element" means:

29 a. For a cooperative under chapter 499A or a  
30 horizontal property regime under chapter 499B, all  
31 portions of the common interest community other than  
32 the units.

33 b. For a planned community, any real estate within  
34 the planned community which is owned or leased by the  
35 unit owners association, other than a unit.

36 c. For all common interest communities, any other  
37 interests in real estate for the benefit of unit owners  
38 which are subject to the declaration.

39 4. "Common expense liability" means the liability  
40 for common expenses allocated to each unit pursuant to  
41 a declaration or bylaws.

42 5. "Common expenses" means expenditures made by, or  
43 financial liabilities of, the unit owners association  
44 or the executive board, together with any allocations  
45 to reserves.

46 6. a. "Common interest community" means real estate  
47 described in a declaration with respect to which a  
48 person, by virtue of the person's ownership of a unit,  
49 is obligated to pay for a share of real estate taxes,  
50 insurance premiums, maintenance, or improvement of, or

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1 services or other expenses related to, common elements,  
2 other units, or other real estate described in the  
3 declaration. "Common interest community" includes  
4 a cooperative under chapter 499A and a horizontal  
5 property regime under chapter 499B.

6 b. Common interest community does not include:

7 (1) A covenant that requires the owners of separate  
8 parcels of real estate to share costs or other  
9 obligations related to a wall, driveway, well, or other  
10 similar structure, unless all such owners consent in  
11 writing to the creation of a common interest community.

12 (2) Real estate described in paragraph "a" if all  
13 units are owned by a single unit owner.

14 7. "Declarant" means any person or group of persons  
15 who, as the record title owner of real estate, by  
16 a declaration, initially creates a common interest  
17 community.

18 8. "Declaration" means the instrument, however  
19 denominated, that creates a common interest community,  
20 including any amendments to the instrument.

21 9. "Executive board" means the body, regardless of  
22 name, designated in the declaration or bylaws to act on  
23 behalf of the unit owners association.

24 10. "Planned community" means a common interest  
25 community that is not a cooperative under chapter 499A  
26 or a horizontal property regime under chapter 499B,  
27 and includes property owner or homeowner associations.  
28 However, a cooperative under chapter 499A or a  
29 horizontal property regime under chapter 499B may be  
30 part of a planned community.

31 11. "Rule" means a policy, guideline, restriction,  
32 procedure, or regulation, however denominated, which is  
33 not set forth in the declaration or bylaws.

34 12. "Unit" means a physical portion of the common  
35 interest community designated for separate ownership or  
36 occupancy or as otherwise defined in the statute under  
37 which the common interest community is organized.

38 13. "Unit owner" means a declarant or other person  
39 that owns a unit, but does not include a person  
40 having an interest in a unit solely as security for  
41 an obligation. In a horizontal property regime under  
42 chapter 499B or a planned community, the declarant is  
43 the owner of any unit created by the declaration. In  
44 a cooperative under chapter 499A, the declarant is  
45 the owner of any unit to which an interest has been  
46 allocated until that unit has been conveyed to another  
47 person.

48 14. "Unit owners association" means a unit owners  
49 association organized under section 499C.201.

50 Sec. 4. NEW SECTION. 499C.104 Variation by

1 agreement.

2 Except as expressly provided in this chapter,  
3 the provisions of this chapter may not be varied  
4 by agreement, and rights conferred by it may not be  
5 waived.

6 Sec. 5. NEW SECTION. 499C.105 Applicability.

7 Unless otherwise provided by law:

8 1. This chapter applies to all common interest  
9 communities established within this state on or after  
10 July 1, 2011.

11 2. This chapter does not apply to common interest  
12 communities of three or fewer units.

13 3. Sections 499C.301, 499C.302, 499C.401, 499C.402,  
14 499C.403, and 499C.501 apply to common interest  
15 communities established before July 1, 2011. Any  
16 portion of a declaration, bylaws, covenant, or  
17 other contractual provision existing prior to July  
18 1, 2011, that violates section 499C.301, 499C.302,  
19 499C.401, 499C.402, or 499C.403 is not enforceable.  
20 However, nothing in this chapter shall be construed to  
21 invalidate other provisions of the declaration, bylaws,  
22 plats, or plans of those common interest communities  
23 established before July 1, 2011.

24 Sec. 6. NEW SECTION. 499C.201 Unit owners  
25 association.

26 1. A unit owners association shall be organized  
27 not later than the date the first unit in the common  
28 interest community is conveyed.

29 2. Membership of a unit owners association shall at  
30 all times consist exclusively of all unit owners except  
31 following termination of the common interest community,  
32 at which time the unit owners association shall consist  
33 of all former unit owners entitled to distributions of  
34 proceeds or their heirs, successors, or assigns.

35 3. A unit owners association shall have an  
36 executive board.

37 4. A unit owners association shall be organized  
38 as a profit or nonprofit corporation, trust, limited  
39 liability company, partnership, unincorporated  
40 association, or any other form of organization  
41 authorized by the law of this state. The requirements  
42 of this chapter relating to a unit owners association  
43 shall preempt any conflicting provision of the statute  
44 under which the unit owner association is organized.

45 Sec. 7. NEW SECTION. 499C.202 Unit owners  
46 association ---- powers and duties.

47 1. Except as otherwise provided in this chapter, a  
48 unit owners association shall do all of the following:

49 a. Adopt bylaws which may be amended subject to the  
50 provisions of section 499C.301.

1 b. Adopt budgets, collect assessments for common  
2 expenses from unit owners, and invest funds of the  
3 association, if applicable.  
4 2. Unless otherwise limited by a declaration or  
5 bylaws, a unit owners association shall have authority  
6 to do any of the following:  
7 a. Adopt and amend rules for operation of the unit  
8 owners association.  
9 b. Hire, employ, and discharge employees, agents,  
10 and independent contractors.  
11 c. Institute, defend, or intervene in litigation,  
12 arbitration, mediation, or administrative proceedings  
13 on behalf of the unit owners association or for two  
14 or more unit owners on matters affecting the common  
15 interest community.  
16 d. Make contracts and incur liabilities.  
17 e. Regulate the use, maintenance, repair,  
18 replacement, and modification of common elements.  
19 f. Cause additional improvements to be made to the  
20 common elements of the common interest community.  
21 g. Acquire, hold, encumber, and convey any right,  
22 title, or interest to real estate or personal property.  
23 h. Grant easements, leases, licenses, and  
24 concessions through or over the common elements of the  
25 common interest community.  
26 i. Impose and receive any payments, fees, or  
27 charges for the use, rental, or operation of the common  
28 elements, other than limited common elements as defined  
29 in section 499B.2, and for services provided to unit  
30 owners.  
31 j. Impose charges for late payment of assessments  
32 and, after notice and an opportunity to be heard,  
33 impose reasonable monetary penalties for violations of  
34 the declaration, bylaws, and rules of the association.  
35 k. Impose reasonable charges for the preparation  
36 and recording of statements of unpaid assessments.  
37 l. Provide for the indemnification of its officers  
38 and executive board, including maintenance of liability  
39 insurance for directors and officers of the unit owners  
40 association.  
41 m. Assign its right to future income, including the  
42 right to receive assessments.  
43 n. Exercise powers conferred by the declaration or  
44 bylaws.  
45 o. Exercise all other powers that may be exercised  
46 in this state by organizations of the same type as the  
47 unit owners association.  
48 p. Suspend any right or privilege of a unit owner  
49 who fails to pay an assessment. The unit owners  
50 association shall not, however, deny a unit owner or



1 other occupant access to the owner's unit, suspend  
2 a unit owner's right to vote, prevent a unit owner  
3 from seeking election as a director or officer of  
4 the association, or withhold services provided to a  
5 unit or a unit owner by the association if the effect  
6 of withholding the service would be to endanger the  
7 health, safety, or property of any person.

8 q. Exercise any other powers necessary and proper  
9 for the governance and operation of the association.

10 3. If a tenant of a unit owner violates the  
11 declaration, bylaws, or rules of the association,  
12 in addition to exercising any of its powers against  
13 the unit owner, the association may do any of the  
14 following:

15 a. Exercise the powers described in subsection 2,  
16 paragraph "j", against the offending tenant.

17 b. After giving notice to the tenant and the unit  
18 owner and providing each an opportunity to be heard,  
19 levy reasonable monetary penalties against the tenant  
20 for the violation.

21 c. Take other action against the tenant for the  
22 violation in the same manner as the unit owner, acting  
23 as landlord, could have exercised under the lease or  
24 in the manner that the unit owners association could  
25 lawfully have taken action directly against the unit  
26 owner, or both. Action under this paragraph may only  
27 be taken if the tenant or unit owner fails to remedy  
28 the violation within ten days after notification by the  
29 unit owners association of the violation.

30 4. Unless a lease of a unit otherwise provides,  
31 this section does not do any of the following:

32 a. Affect rights that the unit owner possesses to  
33 enforce the lease or that the unit owners association  
34 has under other provisions of law.

35 b. In the absence of a violation of the  
36 declaration, bylaws, or rules, authorize the unit  
37 owners association to enforce a lease to which the unit  
38 owners association is not a party.

39 5. An executive board may determine whether to  
40 exercise the association's power to impose sanctions or  
41 commence an action for a violation of the declaration,  
42 bylaws, or rules, including whether to settle any  
43 claim for unpaid assessments or other claim made by  
44 or against the unit owners association. An executive  
45 board does not have a duty to take enforcement  
46 action if the executive board determines, following  
47 consideration of the facts and circumstances presented,  
48 any of the following:

49 a. The association's legal position does not  
50 justify taking any or further enforcement action.

1 b. The covenant, restriction, or rule being  
2 enforced is, or is likely to be construed as,  
3 inconsistent with law.

4 c. Despite the existence of a violation, the  
5 violation is nonmaterial and does not justify  
6 expenditure of the unit owners association resources.

7 d. It is not in the unit owners association's best  
8 interests to pursue an enforcement action.

9 6. The failure of an executive board to take  
10 action pursuant to subsection 5 shall not prevent the  
11 executive board from taking enforcement action under a  
12 similar set of circumstances or facts. The authority  
13 of an executive board to take action under this chapter  
14 shall not, however, be exercised in a arbitrary or  
15 capricious manner.

16 Sec. 8. NEW SECTION. 499C.203 Executive board.

17 1. Except as otherwise provided in the declaration,  
18 the bylaws, subsection 2, or provisions of the statute  
19 under which the common interest community is organized,  
20 an executive board acts on behalf of the unit owners  
21 association. In the performance of their duties,  
22 officers and members of the executive board appointed  
23 by the declarant shall exercise the degree of care  
24 and loyalty to the unit owners association required  
25 of a trustee. Officers and members of an executive  
26 board not appointed by the declarant shall exercise  
27 the degree of care and loyalty to the unit owners  
28 association required of an officer or director of a  
29 corporation organized under chapter 504, and such  
30 officers and members are subject to the conflict of  
31 interest rules governing directors and officers under  
32 chapter 504.

33 2. An executive board shall not act on behalf of  
34 the unit owners association to amend the declaration,  
35 to terminate the common interest community, to elect  
36 members of the executive board, or determine the  
37 qualifications, powers and duties, or terms of office  
38 of executive board members. An executive board may  
39 fill vacancies in its membership for the unexpired  
40 portion of any term.

41 3. a. Subject to subsection 4, the declaration  
42 may provide for a period of declarant control of the  
43 unit owners association, during which a declarant, or  
44 persons designated by the declarant, may appoint and  
45 remove the officers and members of the executive board.  
46 In no case, however, shall a period of declarant  
47 control continue upon the occurrence of any of the  
48 following:

49 (1) Sixty days after the conveyance of seventy-five  
50 percent of all units in the common interest community

1 to unit owners other than a declarant.

2 (2) Two years after all declarants have ceased  
3 to offer units for sale in the ordinary course of  
4 business.

5 (3) Two years after the addition of any number of  
6 new units to the common interest community.

7 (4) The date the declarant, after giving written  
8 notice to all unit owners, records an instrument  
9 voluntarily surrendering all rights to control  
10 activities of the unit owners association.

11 b. A declarant may voluntarily surrender the right  
12 to appoint and remove officers and members of the  
13 executive board before termination of the period under  
14 paragraph "a". However, the declarant may retain,  
15 for the duration of the period of declarant control,  
16 approval authority for specified actions of the unit  
17 owners association or executive board, as described in  
18 a recorded instrument executed by the declarant.

19 4. a. Not later than sixty days after conveyance  
20 of twenty-five percent of the units to unit owners  
21 other than a declarant, at least one member and not  
22 less than twenty-five percent of the members of the  
23 executive board must be elected by unit owners other  
24 than the declarant.

25 b. Not later than sixty days after conveyance of  
26 fifty percent of the units to unit owners other than  
27 a declarant, not less than one-third of the members  
28 of the executive board must be elected by unit owners  
29 other than the declarant.

30 5. Following the termination of any period of  
31 declarant control under this section, the unit owners  
32 shall elect an executive board of at least three  
33 members, at least a majority of whom must be unit  
34 owners. The executive board members shall elect  
35 officers of the executive board. The executive board  
36 members and officers shall take office upon election.  
37 This subsection shall not apply to a common interest  
38 community if all the units of the community are owned  
39 by one owner.

40 6. Notwithstanding any provision of the declaration  
41 or bylaws to the contrary, the unit owners, by a  
42 two-thirds vote of all persons present and entitled  
43 to vote at any meeting of the unit owners at which  
44 a quorum is present, may remove any member of the  
45 executive board with or without cause, other than a  
46 member appointed by the declarant.

47 Sec. 9. NEW SECTION. 499C.301 Amendments to  
48 governing instruments.

49 1. Except as otherwise provided in this section:

50 a. The declaration, bylaws, or plans of a common

1 interest community established before July 1, 2011,  
2 may be amended upon approval of two-thirds of the unit  
3 owners or as otherwise provided in the declaration or  
4 bylaws.

5 b. The declaration, bylaws, or plans of a common  
6 interest community created on or after July 1, 2011,  
7 may be amended by two-thirds of the unit owners unless  
8 the declaration or bylaws expressly require a greater  
9 or lesser percentage.

10 2. Notwithstanding any provision of law to the  
11 contrary, a declaration may expressly reserve authority  
12 to the executive board, with or without the consent of  
13 unit owners, to amend the declaration, bylaws, or plans  
14 of a common interest community to add land, buildings,  
15 or both.

16 3. a. Following adoption of an amendment to a  
17 declaration, bylaws, or plans, the amendment or a copy  
18 of the amended declaration, bylaws, or plan shall be  
19 recorded with the county recorder of the county where  
20 the property is located.

21 b. An amendment may be recorded on behalf of the  
22 required number of unit owners by the officers of the  
23 association if the officers verify under oath that the  
24 proceedings to approve the amendment satisfied the  
25 requirements of this chapter.

26 4. An amendment to a declaration, the bylaws, or  
27 plans to prohibit or materially restrict the permitted  
28 uses of a unit, the permitted uses of a common element,  
29 or the number or other qualifications of persons  
30 who may occupy units shall only be approved upon the  
31 affirmative vote of unit owners equal in number to at  
32 least eighty percent of the total unit owner votes  
33 in the association, unless the declaration requires a  
34 larger percentage. An amendment approved under this  
35 subsection shall provide reasonable protection for a  
36 use or occupancy permitted prior to adoption of the  
37 amendment.

38 5. a. If a declaration, the bylaws, or a plan  
39 requires the consent of a holder of a security  
40 interest in a unit as a condition to the adoption or  
41 implementation of an amendment, consent is deemed  
42 provided if a written refusal to consent is not  
43 received by the association within sixty days after the  
44 association delivers notice of the proposed amendment  
45 to the holder of the security interest at an address  
46 provided by the holder or after the association mails  
47 the notice of the proposed amendment to the holder  
48 by certified mail, return receipt requested, at  
49 the address provided. If the holder of a security  
50 interest has not provided to the association an address

1 for notice, the association shall provide notice to  
2 the address in the security interest of record, if  
3 available.

4 b. Notwithstanding any provision of this section  
5 to the contrary, an amendment to the declaration,  
6 bylaws, or plans that affects the priority of a  
7 holder's security interest or the ability of a holder  
8 to foreclose a security interest may not be adopted  
9 without the security holder's written consent if the  
10 declaration, bylaws, or plans requires that consent as  
11 a condition to the adoption or implementation of the  
12 amendment.

13 6. If a declaration requires that amendments,  
14 including amendments under subsection 4, to the  
15 declaration, bylaws, or plans be adopted only upon the  
16 affirmative vote of unit owners equal in number to at  
17 least eighty percent of the total unit owner votes in  
18 the association, the amendment is approved if one of  
19 the following is met:

20 a. A number of unit owners comprising at least  
21 eighty percent of the total unit owner votes in the  
22 association votes affirmatively for the proposed  
23 amendment, no owner votes against the proposed  
24 amendment, all required notices of the proposed  
25 amendment are delivered to each unit owner as required  
26 under this chapter, and the association does not  
27 receive a written objection to the proposed amendment  
28 within sixty days after delivery of the notice.

29 b. A number of unit owners comprising at least  
30 eighty percent of the total unit owner votes in the  
31 unit owners association votes affirmatively for the  
32 proposed amendment unit, one or more owner votes  
33 against the proposed amendment, and pursuant to an  
34 action brought by the association in the district court  
35 of the county where the property is located against  
36 all objecting unit owners, the court finds that the  
37 objecting unit owners do not have an interest different  
38 in kind from the interests of the other unit owners  
39 that the voting requirement of the declaration, bylaws,  
40 or plans was intended to protect.

41 7. An action challenging the validity of an  
42 amendment adopted pursuant to this chapter shall not  
43 be brought more than one year after the amendment is  
44 recorded.

45 Sec. 10. NEW SECTION. 499C.302 Rules.

46 1. Unless otherwise limited by a declaration or  
47 bylaws, an executive board may adopt and amend rules  
48 for the operation of the executive board or other  
49 matters authorized in the declaration or bylaws.  
50 Before adopting, amending, or repealing a rule, the

1 executive board shall give each unit owner a notice  
2 that states the executive board's intention to adopt,  
3 amend, or repeal a rule, provides the text of the  
4 rule or the proposed change, and states the date the  
5 executive board intends to act on the proposed rule or  
6 amendment following consideration of comments from unit  
7 owners.

8     2. A unit owners association may adopt rules to  
9 establish and enforce construction and design criteria  
10 and aesthetic standards if the declaration so provides.  
11 In accordance with the declaration, a unit owners  
12 association shall adopt procedures for enforcement  
13 of those standards and for approval of construction  
14 applications, including a timeline within which the  
15 unit owners association must act on an application and  
16 the consequences of a unit owners association's failure  
17 to act.

18     3. Following adoption, amendment, or repeal of a  
19 rule, the officers of the unit owners association or  
20 executive board, as applicable, shall notify each unit  
21 owner of the action and provide a copy of any new or  
22 revised rule.

23     4. A rule regulating display of the flag of the  
24 United States shall be consistent with federal law. A  
25 unit owners association shall not prohibit on a unit  
26 or on a limited common element, as defined in section  
27 499B.2, adjoining a unit the display of the flag of  
28 this state, or signs regarding candidates for public  
29 office or unit owners association office or public  
30 measures, but the association may adopt rules governing  
31 the time, place, size, number, and manner of those  
32 displays.

33     5. Unit owners may peacefully assemble on common  
34 elements to consider matters related to the common  
35 interest community, but the unit owners association may  
36 adopt rules governing the time, place, and manner of  
37 such assemblies.

38     6. A unit owners association may adopt rules that  
39 restrict the use of unit or behavior within units that  
40 may be used for residential purposes, but only to do  
41 the following:

- 42     a. Implement a provision of the declaration.
- 43     b. Regulate a behavior in or the occupancy of a  
44 unit that violates the declaration or adversely affects  
45 the use and enjoyment of other units or the common  
46 elements by other unit owners.
- 47     c. Restrict the leasing of residential units to  
48 the extent the rules are reasonably designed to meet  
49 underwriting requirements of institutional lenders  
50 that regularly make loans secured by first mortgages

1 on units in common interest communities or regularly  
2 purchase such mortgages.

3 7. A unit owners association's internal business  
4 operating procedures are exempt from the requirements  
5 of this section.

6 8. Each rule adopted by a unit owners association  
7 or executive board shall be reasonable in nature and  
8 scope.

9 Sec. 11. NEW SECTION. 499C.401 Meetings.

10 1. Meetings of a unit owners association, whether  
11 such association is incorporated or unincorporated,  
12 shall comply with all of the following:

13 a. A unit owners association shall hold a meeting  
14 of unit owners annually at a time, date, and place  
15 stated in or determined in accordance with the  
16 declaration or bylaws.

17 b. A unit owners association shall hold a special  
18 meeting of unit owners to address any matter affecting  
19 the unit owners association if the association's  
20 president, a majority of the executive board, or  
21 an amount of unit owners comprising at least twenty  
22 percent of all votes in the association, unless a  
23 different percentage is specified in the bylaws,  
24 request that the secretary call the meeting. If the  
25 unit owners association does not notify unit owners of  
26 a special meeting within thirty days after the required  
27 number of unit owners has requested the secretary  
28 to call a special meeting, the requesting members  
29 may directly notify all unit owners of the meeting.  
30 Only matters described in the meeting notice may be  
31 considered at a special meeting.

32 c. A unit owners association shall notify each  
33 unit owner of the time, date, and place of each annual  
34 and special unit owners meeting not less than ten  
35 days and not more than sixty days before the meeting  
36 date. Notice may be by any means described in section  
37 499C.403. Each meeting notice shall state the time,  
38 date, and place of the meeting and the items on the  
39 agenda in a manner reasonably calculated to apprise  
40 the unit owners of that information, including but not  
41 limited to:

42 (1) A statement of the general nature of any  
43 proposed amendment to the declaration or bylaws.

44 (2) A statement describing any budget changes.

45 (3) Any proposal to remove an officer or member of  
46 the executive board.

47 d. The requirements relating to the timing of  
48 meeting notices under paragraph "c" may be reduced or  
49 waived for a meeting called to address an emergency.

50 A meeting called to address an emergency shall be

1 limited to matters arising out of the emergency. The  
2 decision of an officer of the unit owners association  
3 to convene a meeting for an emergency shall be ratified  
4 by a majority of unit owners required by the bylaws to  
5 conduct the business of the unit owners association.

6 e. Each unit owner shall be given a reasonable  
7 opportunity at any meeting to comment on any matter  
8 affecting the common interest community or the unit  
9 owners association.

10 f. The declaration or bylaws may allow for meetings  
11 of unit owners to be conducted by telephonic, video, or  
12 other conferencing method, if such method is consistent  
13 with subsection 2, paragraph "g".

14 2. Meetings of the executive board and committees  
15 of the unit owners association, authorized to act for  
16 the unit owners association, shall comply with all of  
17 the following:

18 a. Meetings shall be open to the unit owners except  
19 during executive sessions. The executive board and  
20 committees of the unit owners association may hold an  
21 executive session only during a regular or special  
22 meeting of the board or the committee. No final vote  
23 or action may be taken during an executive session. An  
24 executive session may only be held for the following  
25 reasons:

26 (1) To consult with the unit owners association's  
27 attorney concerning legal matters governed by  
28 attorney-client privilege.

29 (2) To discuss existing or potential litigation or  
30 mediation, arbitration, or governmental administrative  
31 proceedings.

32 (3) To discuss matters relating to the job  
33 performance, compensation, or health records of an  
34 individual employee or specific complaints against an  
35 individual employee of the unit owners association or  
36 an independent contractor employed by the unit owners  
37 association.

38 (4) To discuss contracts, leases, and other  
39 commercial transactions for goods or services that are  
40 under negotiation, including the review of bids or  
41 proposals, if public disclosure of such matters would  
42 place the unit owners association at a disadvantage.

43 (5) To discuss personal, health, or financial  
44 information relating to a unit owner, a specific  
45 employee of the unit owners association, or a specific  
46 employee of an independent contractor retained by the  
47 unit owners association, including any records of the  
48 unit owners association relating to such information.

49 b. For purposes of this section, a gathering of  
50 board members at which the board members do not conduct



1 unit owners association business is not a meeting of  
2 the executive board. Executive board members shall not  
3 use incidental or social gatherings of board members  
4 or any other method to evade the meeting and notice  
5 requirements of this section.

6 c. During a period of declarant control, the  
7 executive board shall meet at least four times a year.  
8 At least one of the meetings shall be held at the  
9 common interest community or at a place convenient  
10 to the unit owners of the common interest community.  
11 After termination of the period of declarant control,  
12 all executive board meetings shall be at the common  
13 interest community or at a place convenient to the unit  
14 owners of the common interest community unless the unit  
15 owners amend the bylaws to vary the location of such  
16 meetings.

17 d. At each executive board meeting, the executive  
18 board shall provide a reasonable opportunity for unit  
19 owners to comment on any matter affecting the common  
20 interest community and the unit owners association.

21 e. Unless the meeting is included in a schedule  
22 given to the unit owners or the meeting is called to  
23 address an emergency, the secretary or other officer  
24 specified in the bylaws shall give notice of each  
25 executive board meeting to each executive board member  
26 and to each unit owner. Such notice shall be given at  
27 least ten days before the meeting and shall state the  
28 time, date, place, and agenda of the meeting.

29 f. If any materials are distributed to the  
30 executive board before a meeting, the executive board,  
31 upon receipt of the materials, shall make copies  
32 reasonably available to unit owners, except that the  
33 executive board is not required to make available  
34 copies of unapproved minutes or materials that are to  
35 be considered during an executive session.

36 g. Unless otherwise provided in the declaration or  
37 bylaws, the executive board may conduct a meeting by  
38 telephonic, video, or other conferencing method if all  
39 of the following conditions are met:

40 (1) The meeting notice states the conferencing  
41 method to be used and provides information explaining  
42 how unit owners may participate in the conference  
43 directly or by meeting at a central location or  
44 conference connection.

45 (2) The process provides all unit owners the  
46 opportunity to hear or perceive the discussion and to  
47 comment on matters before the executive board.

48 h. Following termination of the period of declarant  
49 control, unit owners may amend the bylaws to vary the  
50 procedures for meetings described in paragraph "g".

1 i. In lieu of a meeting, the executive board may  
2 act by unanimous consent if such action is documented  
3 in a record authenticated by all executive board  
4 members. The secretary shall give prompt notice to all  
5 unit owners of any action taken by unanimous consent.  
6 After termination of the period of declarant control,  
7 an executive board may act by unanimous consent only to  
8 undertake ministerial actions or to implement actions  
9 previously taken at a meeting of the executive board.

10 j. Unless otherwise restricted by this chapter or  
11 the common interest community's bylaws, an executive  
12 board may determine rules of procedure for the  
13 executive board.

14 k. An executive board may remove any person from  
15 a meeting of the executive board upon a finding by a  
16 majority of the board members that the person is being  
17 disruptive to the meeting. An executive board may bar  
18 any person from meetings of the executive board or  
19 other meetings of the common interest community for a  
20 period of up to one year if the person has been twice  
21 removed from a meeting within the preceding twelve  
22 months.

23 l. An action by an executive board that is not  
24 in compliance with this section is valid unless  
25 invalidated by a court. A challenge to the validity of  
26 an action of the executive board for failure to comply  
27 with this section shall not be brought more than sixty  
28 days after the minutes of the executive board of the  
29 meeting at which the action was taken are approved  
30 or the record of that action is distributed to unit  
31 owners, whichever is later.

32 Sec. 12. NEW SECTION. 499C.402 Association  
33 records.

34 1. A unit owners association shall retain all of  
35 the following:

36 a. Detailed records of receipts and expenditures  
37 relating to the operation and administration of  
38 the unit owners association and other appropriate  
39 accounting records.

40 b. Minutes of all unit owners meetings and  
41 executive board meetings, a record of all actions taken  
42 by the unit owners or the executive board without  
43 a meeting, and a record of all actions taken by a  
44 committee in place of the executive board on behalf  
45 of the unit owners association. The minutes retained  
46 by the unit owners association shall indicate the  
47 date, time, and place of the meeting, the names of all  
48 persons present at the meeting, and each action taken  
49 at the meeting. The minutes shall also include the  
50 results of each vote taken at the meeting, including

1 information indicating the vote of each executive  
2 board member present at the meeting. The vote of each  
3 executive board member present shall be made public at  
4 the open session.

5 c. The names of all unit owners in a form that  
6 permits preparation of a list of the names of all  
7 owners and the regular mail and electronic mail  
8 addresses at which the unit owners association  
9 communicates with them, the records shall indicate the  
10 number of votes each unit owner is entitled to cast.

11 d. The unit owners association's original and  
12 amended organizational documents, bylaws including all  
13 amendments to the bylaws, and all rules of the common  
14 interest community currently in effect.

15 e. All financial statements and tax returns of the  
16 unit owners association for the past three years.

17 f. A list of the names and addresses of the current  
18 executive board members and officers.

19 g. The unit association's most recent annual report  
20 delivered to the secretary of state, if applicable.

21 h. Copies of each contract to which the unit owners  
22 association is currently a party.

23 i. Records of executive board or committee actions  
24 relating to requests for design or architectural  
25 approval from unit owners.

26 j. Ballots, proxies, and other records related to  
27 voting by unit owners for one year after the election,  
28 action, or vote.

29 2. Except as provided under subsections 3 and  
30 4, all records retained by a unit owners association  
31 must be available for examination and copying by a  
32 unit owner or the unit owner's authorized agent during  
33 reasonable business hours or at a mutually convenient  
34 time and location upon providing a five days' notice  
35 that reasonably identifies the specific records that  
36 are being requested.

37 3. Records retained by a unit owners association  
38 may be withheld from inspection and copying to the  
39 extent that they concern:

40 a. Personally identifiable information, salary, and  
41 medical records relating to specific individuals.

42 b. Information relating to contracts, leases, and  
43 other commercial transactions to purchase or provide  
44 goods or services, currently under negotiation.

45 c. Information relating to existing or potential  
46 litigation, mediation, arbitration, or governmental  
47 administrative proceedings.

48 d. Information relating to existing or potential  
49 matters involving governmental administrative  
50 proceedings or other proceedings before a government

1 tribunal for enforcement of the declaration, bylaws,  
2 or rules.

3 e. Communications with the unit owners association  
4 attorney which are otherwise protected by the  
5 attorney-client privilege or the attorney work-product  
6 doctrine.

7 f. Information that if disclosed would violate  
8 another provision of law.

9 g. Records of an executive session of the executive  
10 board. However, upon the completion of a matter  
11 that is the subject of an executive session held  
12 under section 499C.401, subsection 2, paragraph "a",  
13 subparagraphs (1) through (4), such records of the  
14 executive session shall be available for inspection as  
15 provided in this section.

16 h. Records directly related to the personal,  
17 health, or financial information of a unit owner, if  
18 the person requesting the records is not the unit owner  
19 that is the subject of the records.

20 4. A unit owners association may charge a  
21 reasonable fee for providing copies of any records  
22 under this section and for supervising the inspection  
23 of such records.

24 5. The right to inspect records under this section  
25 includes the right to copy records by photocopying or  
26 other means including copies through an electronic  
27 transmission, if available, upon request of the  
28 requester.

29 6. A unit owners association is not obligated to  
30 compile or synthesize information or records under this  
31 section.

32 7. Information or records obtained under this  
33 section shall not be used for commercial purposes.

34 Sec. 13. NEW SECTION. 499C.403 Notice to unit  
35 owners.

36 1. A unit owners association or an executive board,  
37 as applicable, shall deliver each notice required to be  
38 given by the association or board under this chapter  
39 to the regular mail address or electronic mail address  
40 provided by each unit owner. If a regular mail address  
41 or electronic mail address is not provided by the unit  
42 owner, the notice may be delivered using any of the  
43 following methods:

44 a. Hand delivery to the unit owner.

45 b. Mailing by regular mail or certified mail, as  
46 defined in section 618.15, to the address of the unit.

47 c. Any other method reasonably calculated to  
48 provide notice to the unit owner.

49 2. The ineffectiveness of a good-faith effort to  
50 deliver notice under subsection 1 does not invalidate

1 an action taken at a meeting or an action taken by  
2 other means.

3 Sec. 14. NEW SECTION. 499C.501 Cause of action ----  
4 attorney fees.

5 A declarant, unit owners association, unit owner,  
6 or any other person subject to this chapter may bring  
7 an action to enforce a right granted or obligation  
8 imposed by this chapter, the declaration, or the  
9 bylaws. In any action brought under this chapter,  
10 the court may award reasonable attorney fees to the  
11 prevailing party. In any action brought under this  
12 chapter, the unit owners association or the executive  
13 board, as applicable, shall have the burden of proving  
14 by a preponderance of the evidence that a duty or  
15 requirement imposed on the unit owners association or  
16 executive board under this chapter has been met.

17 DIVISION II

18 ADDITIONAL PROVISIONS AND

19 CORRESPONDING CHANGES

20 Sec. 15. NEW SECTION. 499A.1A Applicability.

21 This chapter shall apply to cooperatives established  
22 under this chapter unless otherwise provided in chapter  
23 499C.

24 Sec. 16. NEW SECTION. 499B.1A Applicability.

25 This chapter applies to horizontal property regimes  
26 established under this chapter unless otherwise  
27 provided in chapter 499C.

28 Sec. 17. Section 499B.2, Code 2011, is amended by  
29 adding the following new subsection:

30 NEW SUBSECTION. 1A. "As-built certificate" means  
31 a certificate and any accompanying documentation  
32 from a competent licensed professional engineer,  
33 licensed land surveyor, or registered architect,  
34 that certifies that such individual has examined the  
35 plan filed with the declaration and that the plan  
36 does diagrammatically represent, insofar as may be  
37 reasonably determined through the use of nondestructive  
38 measurement techniques, the building, the general  
39 common elements, and the limited common elements that  
40 have been constructed on the real estate described in  
41 the declaration and plans.

42 Sec. 18. Section 499B.6, Code 2011, is amended to  
43 read as follows:

44 499B.6 Copy of ~~the floor~~ plans to be filed.

45 1. There shall be attached to the declaration, at  
46 the time it is filed, a full and an exact copy of the  
47 plans of the building, ~~which copy shall be entered~~  
48 ~~of record along with the declaration or buildings and~~  
49 an as-built certificate or a certificate described in  
50 subsection 2, paragraph "a".

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1     2. a. If a portion of the horizontal property  
2 regime is not completed at the time the declaration  
3 is filed, the declaration may be filed, in lieu of an  
4 as-built certificate, with a certification that the  
5 plans diagrammatically represent, insofar as reasonably  
6 ascertainable, the buildings the declarant intends to  
7 construct.

8     b. Upon completion of all buildings of a horizontal  
9 property regime, for which a certificate under  
10 paragraph "a" was filed, the declarant shall file for  
11 recording an as-built certificate.

12     c. Upon completion of a discrete portion of a  
13 horizontal property regime project, a declarant may  
14 file an as-built certificate for the portion then  
15 completed.

16     d. The absence of a certificate described in this  
17 subsection for a declaration recorded before July 1,  
18 2011, shall not affect the marketability of title.

19     3. The plans described in subsection 1 shall show  
20 graphically all particulars of the building, including,  
21 but not limited to, the dimensions, area, and location  
22 of common elements affording access to each apartment.  
23 Other common elements, both limited and general, shall  
24 be shown graphically insofar as possible and shall  
25 be certified to by an engineer, architect, or land  
26 surveyor, who is registered or licensed to practice  
27 that profession in this state.

28     Sec. 19. Section 499B.15, subsection 2, Code 2011,  
29 is amended by striking the subsection.>

30     2. By renumbering as necessary.

By HAGENOW of Polk

**H-1698** FILED APRIL 26, 2011

**SENATE FILE 514**

**H-1695**

1     Amend Senate File 514, as amended, passed, and  
2 reprinted by the Senate, as follows:

3     1. Page 1, lines 10 and 11, by striking <allocate  
4 at least> and inserting <not allocate more than>

5     2. By renumbering as necessary.

COMMITTEE ON WAYS AND MEANS

SANDS of Louisa, Chairperson

**H-1695** FILED APRIL 26, 2011

# Fiscal Note

*Fiscal Services Division*



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**SF 522** – Commercial Property Tax (LSB 1908SV)

Analyst: Jeff Robinson (Phone: 515-281-4614) ([jeff.robinson@legis.state.ia.us](mailto:jeff.robinson@legis.state.ia.us))

Fiscal Note Version – As passed by the Senate

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## **Description**

**Senate File 522**, as passed by the Senate, creates a business property tax credit for commercial, industrial, and railroad property. The property tax credit is funded through an annual General Fund appropriation to a new Business Property Tax Credit Fund.

The credit first applies to property taxes paid during FY 2013 and a standing limited appropriation of \$50.0 million is created to fund the credit. For each property parcel, or for each property unit, whichever is applicable, the tax credit will equal the tax dollar difference between the taxes due as a commercial or industrial property and the taxes due as a residential property, calculated on a predetermined base value. This “Credit Base” value will be established each year by the Department of Revenue and it will be calculated using the taxed value of every eligible business property, each eligible property’s tax rate, and 98.0% of the funds available each year to finance the credit. The Credit Base will be the same for all eligible business properties in the State.

The eligible business property owner will receive the benefit of the credit through a lower property tax payment. The State distributions from the Business Property Tax Credit Fund will reimburse local governments for the revenue loss associated with the new credit.

The Bill provides that if the year-over-year General Fund revenue growth of the State exceeds 4.0%, the standing limited appropriation is increased by \$50.0 million. This increase may occur no more than three times, so the maximum annual appropriation is \$200.0 million. If General Fund revenue grows 4.0% or more for FY 2012, FY 2013, and FY 2014, the \$200.0 million could first be reached FY 2016.

## **Background**

**Tax credit calculation:** The tax credit is calculated on building/improvement value only and it only applies to value subject to tax (*i.e.*: It does not apply to value that is exempt from property tax.) For an individual property parcel classified as commercial or industrial, the taxed building value is first compared to the Credit Base. If the taxed building value is below the Credit Base for that year, the taxed building value is used in the tax credit calculation. If the taxed building value is equal to or above the Credit Base, the Credit Base is used in the tax credit calculation. The amount of the tax credit for each eligible property will be calculated by the following formula:

$$\text{Tax Credit} = V \text{ times } (A \text{ minus } B) \text{ times } R$$

Where:

V = either the taxed building value or the Credit Base, whichever is lower

A = the applicable business class rollback in effect for that tax year (commercial or industrial)

B = the residential rollback for that year

R = the consolidated property tax rate for the property that year, divided by \$1,000

**Credit Base Calculation:** The task of the Department of Revenue, prior to the start of each fiscal year, will be to accumulate the taxed building value and applicable tax rate for each eligible business property, and to then calculate what Credit Base value would expend 98.0% of the funds available for financing the credit in the upcoming year. That Credit Base will be transmitted to county officials to prepare the property tax statements for the eligible properties.

### **Fiscal Impact**

Assuming an accurate calculation of the Credit Base, \$49.0 million for the tax credit program will be distributed in FY 2013 and the Business Property Tax Credit Fund will retain \$1.0 million, plus any interest earned, for distribution in FY 2014.

For FY 2014, the balance in the Business Property Tax Credit Fund and the FY 2014 General Fund appropriation of either \$50.0 million or \$100.0 million will be included when calculating the Credit Base for FY 2014. The Department of Revenue will determine the appropriate Credit Base for FY 2014 based on 98.0% of the funds available for distribution.

Going forward, the credit base will be calculated using 98.0% of the funds available each year.

The new tax credit will require additional forms and administrative costs for county offices and the Iowa Department of Revenue. The administrative costs will first occur in FY 2012. The additional costs after the first implementation year should be minimal.

### **Sources**

Iowa County and City Assessors  
Legislative Services Agency Analysis  
Department of Revenue

/s/ Holly M. Lyons

April 26, 2011

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the correctional and minority impact statements were prepared pursuant to Code [Section 2.56](#). Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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